

The complaint

Miss B has complained that Bank of Scotland plc trading as Halifax (BoS) won't refund her for transactions she made as part of a third-party scam.

What happened

I'm not going to cover all the points raised in detail. The view of 1 April 2022 covered the detailed timeline of the transactions and the details of Miss B's testimony. But briefly, Miss B made a number of payments between 1 October 2021 and 29 October 2021 totalling £21,500 (for which she incurred charges of £28.50). She believed she was making payments to help someone she had recently become romantically involved with online.

Miss B said in late September 2021, she met an individual (who I will refer to as C) on a social media dating platform. The pair soon began messaging through a popular instant messaging forum. C explained he was working abroad on an oil rig and working on a project before returning home. Unfortunately, unbeknown to Miss B at the time, C was in fact a fraudster.

After the pair had been messaging for a few days C asked Miss B to log in to his bank account to pay a tax bill. The following day C asked Miss B for money for a gas cylinder as he was unable to access his bank account due to an unrecognised login. Miss B explained she didn't have the money and she wasn't able to obtain money from friends or family. In the end Miss B shared her bank details with C and provided him with the code to authorise a transaction for £1,500. Miss B went on to take out two loans for £10,000 each which she also forwarded to an account given by C.

When Miss B realised, she'd been scammed she asked BoS to refund the transactions. BoS declined Miss B's claim. It said because the transfers were international payments, they were not covered under the Contingent Reimbursement Model (CRM Code). It also considered Miss B did not have a reasonable basis for believing C was genuine or would pay her back. It said a conversation took place with the bank after the first payment and Miss B told it the payment was for a long-term friend and she would be making further payments to this person.

BoS said it discussed romance scams with Miss B at this point, but Miss B said she was confident in what she was doing. It said further payments were not made in quick succession and went to the same payee that Miss B had confirmed was genuine. It also felt evoking the banking protocol would not have stopped the scam.

The investigator upheld the complaint in part. He didn't feel the bank had done enough and missed an opportunity to discuss the payment Miss B was making in more detail and ultimately it ought to have evoked the Banking Protocol. But the investigator also felt that Miss B ought to share in the responsibility for her actions as well. He therefore recommended the bank refund 50% of the payments Miss B made.

BoS accepted the investigator's recommendations but Miss B did not.

I initially wrote to both parties to explain that I was reaching the same outcome as the investigator – broadly for the same reasons but explaining that redress was going to differ. BoS offered to put things right as suggested but Miss B wanted a decision on the matter.

I issued my provisional decision on 22 September 2022. BoS accepted my provisional decision. Miss B did not respond.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As neither party has provided any further evidence or arguments for consideration, I see no reason to depart from the conclusions set out in my provisional decision. For completeness, I have set this out below.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulator's rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The CRM Code doesn't apply in this case because the payments were made to an international account.

The relevant regulations (and the terms of her account) make Miss B responsible for payments she's made herself in the first instance. In broad terms, the starting position is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. There's no dispute here that Miss B authorised (albeit that the first transaction was carried out by C with Miss B's authority) the payments.

However, where a customer makes a payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though the consumer authorised the payment. Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider BoS should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

BoS accepted the investigator's recommendation to refund 50% of Miss B's loss -

accepting that it ought to have done more and recognising that means it bears some responsibility for Miss B's loss. As it has already accepted it ought to have done more - I don't propose to go into detail here – except to say that broadly for the same reasons as the investigator, I agree it was right of BoS to make that offer.

Miss B did not accept the investigator's recommendations – because not all her losses have been compensated for. This is because the investigator concluded Miss B should share in the responsibility for her losses.

So, as well as thinking carefully about what BoS's obligations were, as set out above, the other key issue is whether Miss B acted reasonably taking into account all the circumstances of the scam. So, I have gone on to consider whether Miss B should bear some responsibility for her loss by way of contributory negligence.

- Miss B sent considerable sums to, and shared her bank details with, someone she had met through an online dating site after just a few days. She had not met the individual in person or spoken to them on the phone. I think the risk of sending money and sharing her banking details in this situation is clearly heightened and warranted further checking. I don't think Miss B did enough to satisfy herself she would get her money back or ever meet C. She had no proof he really existed and took his word for it.
- Miss B was willing to mislead the bank by giving false information about how long she had known C for the first transfer. I appreciate this may have been under the influence of the scammer, but I think, in these circumstances, it would've been more difficult for the bank to accurately assess whether or not she was at risk of financial harm so that it could easily unravel the scam or break the spell which Miss B was acting under.
- On 1 October 2021, Miss B told C she had spoken to a family member and he said he was very concerned about her and that this was not genuine. On 26 October 2021, Miss B explained that she had been warned by her friend from 'the beginning' as she expected C to ask Miss B for money. Miss B received warnings from family and friends and went ahead anyway; ignoring what she had been told by those closest to her.
- On 16 October 2021, Miss B indicated that she was aware of scams like this as she told C “...*you hear of stories like this and I just have the smallest fears*”. But it seems she chose to ignore what she knew and believe in C when he reassured her that he was genuine.
- On 28 October 2021, it seems from the messages with C that Miss B received a warning about online romance scams and shared the image with C. Specifically Miss B seemed concerned and referred C to part of the warning about *Helping someone online with money and ... not available on phone or video and having bank details*. Yet still proceeded with the loan and forwarded the money to C the following day.

So, despite clear red flags, Miss B proceeded - choosing to rely only on what the perpetrator told her. It seems to me Miss B understood the potential financial implications and took a chance by believing what she was being told by C. Whilst I think BoS could have done more— in my view Miss B should bear some of the responsibility by way of contributory negligence.

Recovery of funds

In this case the funds were transferred to an international bank account. International banks aren't bound by the same rules and regulations as banks within the UK. The first scam payment was made on 1 October 2021 and the last on 29 October 2021 and the scam was reported on 8 November 2021. BoS contacted the receiving banks on 9 November 2021 and asked for the funds to be returned to Miss B. But BoS is reliant upon the international banks choosing to return funds. It can't require or force them to and unfortunately no funds have been returned. And even if there was a slight delay by BoS, I don't consider it would make a difference in this case as scammers usually remove funds within hours.

I'm sorry Miss B has lost money and I can understand why she would like to be compensated for all her losses. There is no dispute that Miss B has been a victim of fraud and I am deeply sorry for that, but it doesn't automatically mean BoS is liable for her loss or all her losses. It's important to emphasise that I'm only considering whether the bank, which had no involvement in the scam itself, should be held responsible for what happened.

I realise my decision will be a significant disappointment to Miss B. I do accept she has fallen victim to what can only be described as a cruel and callous scam. However, despite my natural sympathy for the situation she finds herself in, ultimately, I think Miss B should also bear some responsibility for her actions. It therefore follows that I don't think that BoS's refusal to fully reimburse Miss B for these transactions was unfair or unreasonable.

Putting things right

In order to put things right for Miss B, I require Bank of Scotland plc trading as Halifax to:

- Refund 50% of the first transaction of £1,500
- Refund 50% of the total loan repayments Miss B has made towards both loans
- Refund 50% of the international charges incurred on all transactions
- Add interest at the rate of 8% simple per annum to each repayment above from the date it was made to the date of settlement.
- Write off 50% of the remaining balances on the loans (make arrangements with the third-party loan provider or pay Miss B the equivalent so she can do so)
- Amend her credit file to reflect the above.

My final decision

My final decision is I uphold this complaint in part and I require Bank of Scotland plc trading as Halifax to put things right for Miss B as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 4 November 2022.

Kathryn Milne
Ombudsman